

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Deployment of Wireline Services Offering
Telecommunications Capability

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CC Docket No. 98-147

COMMENTS OF GTE

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Summary

The Commission's stated goals in adopting the *NPRM* are admirable: "not to pick winners or losers, or select the 'best' technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of customers." These goals are plainly appropriate, given the substantial public benefits that will result from widespread deployment of advanced services, the high level of existing competition in the market for these services, and the lack of advantage held by any industry segment. GTE particularly supports the Commission's commitment "to ensuring that incumbent LECs make their decisions to invest in and deploy advanced telecommunications services based on the market and their business plans, rather than regulation." GTE nonetheless submits that the proposals set forth in the *NPRM* are antithetical to achieving these laudable goals.

In determining what course to pursue, GTE urges the Commission to keep in mind four fundamental realities:

- First, contrary to the established local exchange market, which is the primary focus of the resale and unbundling obligations contained in the Telecommunications Act of 1996, advanced data services are an emerging market where no entity enjoys a preferred position. Competitors in this market include sophisticated companies from every corner of the communications industry, including cable operators (which already make high-speed cable modem service available to almost 14 million homes), the global AT&T, MCI WorldCom, and Sprint combines, dynamic terrestrial wireless companies such as WinStar, and satellite service providers such as Hughes.
- Second, ILECs have no bottleneck control of any essential input to advanced services; they are in fact among the newest entrants in a market that is dominated by cable companies. Indeed, the technology for advanced services is not integrated into the ILEC's existing network; rather it consists of

add-ons that are readily available in the marketplace to all providers on an equitable basis.

- Third, ILECs already are subject to regulatory burdens not shared by their competitors. Even before adoption of any new rules, ILECs – despite holding no advantage over the giant cable MSOs, AT&T/TCG/TCI/BT, MCI WorldCom/Brooks/MFS/UUNet, and Sprint/Deutsche Telekom/France Telecom – are subject to unique regulatory disabilities. This regulatory asymmetry causes marketplace distortions that interfere with full competition. The Commission should ensure, therefore, that any additional rules to govern the provision of advanced services do not further restrain competition.
- Fourth, advanced services technology is evolving at lightning speed and cannot be neatly pigeon-holed into outmoded regulatory categories. All providers of advanced services compete to provide fungible capabilities to customers, regardless of their pre-existing regulatory classification.

GTE respectfully submits that the proposals in the NPRM do not reflect these realities and, indeed, would create powerful disincentives to investment in and deployment of advanced services, to the direct detriment of consumers. Nonetheless, in order to address the Commission's stated concerns that ILECs might have the incentive and ability to discriminate in favor of affiliated providers of advanced services and to engage in cross-subsidization, GTE has crafted a "National Advanced Services Plan" (NASP), which is summarized below and described fully herein. The NASP presents a more flexible yet fully effective approach that allows market forces, rather than regulation, to determine which companies succeed and which do not, and assures that all advanced service providers, including affiliates of an ILEC, relate to the ILEC on an equal basis. Specifically, the NASP creates a structure that will foster maximum capital investment and sharing of risk by all market participants and consequently expand the universe of competitive alternatives for consumers.

Description of GTE's National Advanced Services Plan

The NASP has the following components:

- ◆ Any affiliate operating in accordance with § 64.1903 of the Commission's rules (including requirements for separate books of account, no joint ownership of transmission or switching facilities, and an obligation to obtain telecommunications services at tariffed rates or pursuant to non-discriminatory, approved interconnection agreements) would be deemed non-dominant and non-incumbent.
- ◆ An ILEC would be allowed to transfer personnel and other resources to an affiliate that conforms with § 64.1903 of the Commission's rules if those resources were deployed prior to the final date of the Commission's order on this *NPRM*. That would allow a corporate parent whose ILEC subsidiaries have already deployed advanced services and facilities to operate its advanced services business consistently with the Commission's rules established in this proceeding and will not penalize companies that have been pioneers in the deployment of advanced services.
- ◆ An affiliate that conforms with § 64.1903 of the Commission's rules may be staffed by personnel hired from the ILEC (or anywhere else), just as non-incumbent firms – like AT&T, MCI WorldCom and Sprint – staff personnel among their affiliates.
- ◆ An affiliate that conforms with § 64.1903 of the Commission's rules may not obtain credit under arrangements that permit a creditor to have recourse against the assets of the ILEC if the affiliate defaults, with the clarification that parent companies may continue to fund both ILEC and non-ILEC operations, as they have done for decades.

◆ Affiliate/ILEC contracts governing transactions (other than those not already covered by tariff or an approved interconnection agreement) should be disclosed to regulators on request.

◆ The Commission's collocation rules would undergo four targeted modifications to promote deployment of advanced services. Under these modifications, CLECs could: (1) place their equipment in "shared" collocation space dedicated to CLEC use, with or without employing cages; (2) lease collocation space in increments of 25 square feet; (3) sub-lease space within collocation cages; and (4) use third party inspection to confirm that space in a central office is exhausted.

◆ The Commission's loop unbundling rules would be modified so that ILECs would permit sub-loop unbundling upon bona fide request where technically feasible and so long as full compensation is received. In addition, GTE voluntarily would make xDSL-conditioned loops available upon request where technically feasible, even in areas where neither its ILECs nor advanced services affiliate provides advanced services, if it fully recovers its costs. (The Commission should recognize that a relatively small percentage of loops cannot be conditioned to support advanced services.)

In short, GTE's NASP builds on existing affiliate rules and does not burden the provision of advanced services with new, more complex and onerous regulation. At the same time, the NASP fully addresses the concerns expressed by the Commission in the *NPRM* and extends greater flexibility to CLECs seeking to utilize ILEC facilities. This approach therefore is precisely the kind of pro-competitive, deregulatory action that

Congress sought to utilize as a means of encouraging the deployment of advanced services to all Americans.

Summary of GTE's Concerns With the Commission's Proposals

GTE's NASP incorporates many aspects of the Commission's proposed rules. At the same time, however, GTE is gravely concerned that other portions of the proposals would place untenable and unwarranted burdens on participation in the advanced services market by companies with ILEC affiliates. Taken as a whole, the proposals therefore would restrain competition and ill-serve consumers.

The *NPRM* consists of two categories of proposals: (1) an "optional alternative path" under which affiliates of ILECs, if sufficiently separated from the ILEC, would be treated as non-incumbent and non-dominant, and (2) a dramatic expansion of the FCC's existing unbundling, collocation, and resale rules. Looking first at the structural separation proposals, the Commission would require advanced services affiliates to comply with a set of seven conditions in order to be considered non-dominant and non-incumbent. Overall, these conditions have no basis in the statute (e.g., §§ 251(h) and 272) and are an unwarranted departure from Commission precedent (the *Competitive Carrier Fifth Report and Order*, *Non-Structural Safeguards Order*, and *Regulatory Treatment Order*). The Commission also seeks comment on further, and more extreme, restrictions, including limits on the affiliate's ability to obtain services and network elements from the ILEC, to hire employees from the ILEC, to employ a corporate brand name, and to receive funding from the common corporate parent of the affiliate and the ILEC.

As an initial matter, the proposed conditions and additional restrictions are entirely unrelated to the legal issue of whether the affiliate is a "successor or assign" of the ILEC. For example, under no reasonable construction of that statutory phrase could the ban on an ILEC's performing operations and maintenance functions for the affiliate, or the requirement to publish a written account of affiliate transactions within ten days, be considered necessary to avoid classification of the affiliate as an ILEC. Nor are such intrusive restrictions necessary to avoid dominant status – the affiliate, after all, is a new entrant with no prospect of achieving market power – or to assure fair competition. Nowhere in the *NPRM* does the Commission explain why existing affiliate transaction and separation requirements, among the panoply of other regulations circumscribing ILECs' activities, are inadequate to assure that AT&T/TCG/TCI/BT, MCI WorldCom/Brooks/MFS/UUNet, Sprint/Deutsche Telekom/France Telecom, and the large cable MSOs will be protected from alleged (and entirely speculative) ILEC anticompetitive behavior.

Beyond their legal infirmity, the proposed separation requirements and additional restrictions would undermine any incentive by a corporate parent that operates both dominant and nondominant entities to invest in deploying advanced communications technology. Most notably, the rules would preclude the separate affiliate from achieving economies of scale and scope that are readily available to its well-established, heavily financed, and aggressive competitors. As a result, even if the affiliate were potentially more efficient than all of these companies (if allowed to compete without unique limitations on its structure and operations), it could not hope to compete effectively.

Moreover, the Commission's proposed plan would require the parent to make duplicative investments in both its ILEC and the "truly" separate advanced services affiliate. Capital is a scarce resource. No corporation with fiduciary obligations to its shareholders can make an investment twice unless doing so makes good business sense and it can expect to earn its cost of capital. That will never happen under the Commission's approach, which places all risk of market failure and capital investment on the ILEC and thereby creates a powerful disincentive to using the nondominant option. The true losers from the resulting depressed investment and innovation, of course, are consumers, who will end up paying more and receiving less than they would if ILECs and their affiliates could compete on equitable terms.

Radically expanding the collocation, unbundling, and resale rules along the lines inquired about in the *NPRM* would further deter investment (by, for example, compelling ILECs to provide competitively available services and equipment to their rivals at below-market rates). The existing rules generally are working well, and the vast majority of complaints from CLECs amount to unsubstantiated competitive posturing. Moreover, a number of the proposals are legally insupportable. For example, mandatory collocation of switching equipment would violate § 251(c)(6) of the Act, as the Commission already has found. Similarly, requiring ILECs to unbundle DSLAMs and other equipment that is readily available in the marketplace cannot be squared with § 251(d)(2) of the Act; forcing ILECs to provide a loop/DSLAM platform would contravene § 251(c)(3) and the *Iowa Utilities Board* decision; and compelled spectrum unbundling violates that section and § 153(29), since derived spectrum is not a "network element." Nor is discounted resale of advanced services consistent with the statute. These services (a) are not

always telecommunications services, (b) are not offered "at retail" as that term is traditionally used, and (c) are not necessarily provided predominantly to non-telecommunications carriers, the prerequisites to discounted resale established in § 251(c)(4).

* * *

For these reasons, GTE urges the Commission to adopt its NASP rather than the far more burdensome and inflexible rules proposed in the *NPRM*. GTE respectfully submits that the NASP will advance Congress's goals in enacting § 706 of the 1996 Act while remaining true to the deregulatory imperative underlying the statute. By enabling market forces rather than regulatory protectionism to determine which companies succeed, GTE's approach will foster innovation, compel efficiency, and thereby maximize benefits for consumers.

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COMMENTS OF GTE

GTE Service Corporation and its below-listed affiliates¹ (collectively "GTE") respectfully submit their comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in this docket.² The Commission's stated goals in adopting the *NPRM* are admirable: "not to pick winners or losers, or select the 'best' technology to meet consumer demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of customers."³ These goals are plainly appropriate, given the substantial public benefits that will result from widespread deployment of advanced services, the high level of existing competition in the market for these services, and the lack of advantage held by any industry segment. GTE

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, GTE Media Ventures Incorporated, and GTE Internetworking Incorporated.

² FCC 98-188 (rel. Aug. 7, 1998).

³ *Id.*, ¶ 2.

particularly supports the Commission's commitment "to ensuring that incumbent LECs make their decisions to invest in and deploy advanced telecommunications services based on the market and their business plans, rather than regulation."⁴ To this end, the Commission has proposed an "optional alternative pathway" under which a separate affiliate of the common parent would be able to provide advanced services free from § 251(c) obligations and dominant carrier regulation.

Unfortunately, the proposed alternative path leads away from, rather than toward, achievement of these lofty goals. The burdensome hyper-separation requirements enumerated in the *NPRM* actually would deter investment in advanced technology and services by ILECs, their affiliates, and competitors alike. As a result, consumers would face an impoverished range of competitive choices and higher prices than would occur in a less intrusively regulated environment. These effects would be exacerbated if the proposed radical expansion of unbundling and collocation obligations were adopted as well.

Rather than pursuing the tentative conclusions contained in the *NPRM*, the Commission should adopt GTE's "National Advanced Services Plan" (NASP), detailed herein, which presents a more flexible yet equally effective approach. The NASP presents a structure that will foster maximum capital investment and sharing of risk by all market participants and consequently expand the universe of competitive alternatives for consumers. The NASP features significant commitments that GTE is prepared to make, including conditioned loop availability, more flexible collocation, and

⁴ *NPRM*, ¶ 13.

other measures designed to assure that all advanced service providers, whether or not affiliated with an ILEC, relate to the ILEC on an equal footing.

I. INTRODUCTION AND OVERVIEW OF GTE'S RECOMMENDATIONS

A. The Advanced Services Marketplace Is Vigorously Competitive And Does Not Rely On ILEC Telephone Networks For Essential Inputs.

In the *Advanced Services MO&O*, the Commission notes that:

Today, incumbent wireline carriers and new entrants are at the early stages of deploying xDSL and other advanced services. Thus, the incumbent does not currently enjoy the overwhelming market power that it possesses in the conventional circuit-switched voice telephony market.⁵

This assessment is something of an understatement. In reality, not only do ILECs lack market power in the provision of advanced services, but they are the newest among a multitude of rivals in a vigorously competitive market.

GTE and other ILECs have just begun deploying xDSL-based services.

Competitors from other industry segments have a tremendous head start that ILECs may not be able to overcome.⁶ For example, cable companies have been supplying broadband voice, video, data, and Internet access using cable modems for well over a year now. As the Commission's Office of Plans and Policy recently explained:

⁵ *Advanced Services MO&O*, ¶ 10.

⁶ See *Broadband Networking News* (August 4, 1998), at 6 (in a recent report, "Broadband in the Local Loop - 98, Cable Modem Madness vs. DSL Dementia," Forward Concepts projects 9.6 million cable modems will be deployed in the North American market by 2003, while the number of ADSL modems will be 1.86 million – nearly a five-to-one ratio in favor of cable modems).

The cable industry's broadband platform makes cable an optimal medium for transmitting large amounts of digital information – data, graphics, and video – at high speeds. Upgraded cable systems can, depending upon usage conditions, carry data up to 1000 times faster than transmission using dial-up modems over ordinary copper twisted-pair phone lines, and 100 times faster than ISDN⁷

According to the National Cable Industry Overview,⁸ cable companies have expanded commercial cable modem services into approximately 87 markets throughout the United States. Today, 13.9 million homes in 29 states have access to residential cable modem service. Nearly 125,000 customers already subscribe to this new way of accessing the Internet and on-line services, which supports speeds 50 to 100 times faster than telephone-based modem technologies.⁹

In addition, cable operators continue to create new on-line services that take advantage of cable's high bandwidth, such as @Home, Road Runner, Optimum Online, MediaOne Express, Bresnan Link, PowerLink, and Charter Pipeline. Notably, none of these services utilizes any portion of the ILECs' local telephone networks. In fact, the

⁷ B. Esbin, *Internet Over Cable: Defining the Future in Terms of the Past*, OPP Working Paper No. 30 (August 1998), at 76 ("*Internet over Cable*").

⁸ See Cable Television Industry Overview as of April 1998, "Delivering New Cable Products and Services: High Speed Cable Modems," http://www.ncta.com/overview98_2.html.

⁹ In 1997, Deutsche Morgan Grenfell found cable modem customers of @Home and MediaOne Express (formerly Highway 1) to be 100 percent satisfied with the speed, reliability, customer service, and installation process of the new cable modem services: "The broadest and most important conclusion we drew from the survey was also a very simple one: cable operators are not lying – users do love the service." Douglas S. Shapiro, "Cable Modem Users Speak Out," Deutsche Morgan Grenfell (Jan. 21, 1997), at 2.

cable companies are developing "a specialized form of IP telephony tailored for cable systems, that would enable telephone customers to by-pass LEC and even IXC telephone networks entirely."¹⁰

Nor are cable companies the only competition for ILEC-provided advanced services. CLECs are active players in this market, and in many cases have introduced offerings prior to the ILECs. As ALTS explains, "CLECs were the first to introduce fiber ring networks and synchronous optical network ('SONET')-based services, and are at the forefront in deploying new digital subscriber line ('xDSL') technologies."¹¹ ALTS further confirms that "CLECs are aggressively providing digital services throughout the nation using xDSL and other technologies."¹²

Other industry segments, including terrestrial wireless carriers and satellite providers, also compete in the advanced services market, offering alternatives to ILEC local loops. For example, WinStar is deploying network equipment that will support "enhanced voice, video conferencing, native LAN-LAN interconnections, MPEG-2 video

¹⁰ *Internet over Cable* at 81. The *Internet Over Cable* paper explains that "[t]his form of IP telephony would look like current, PSTN-based telephony from the customer standpoint. Customers would use current telephone handsets and inside wiring, but the wiring would connect the handset to the cable system through a cable modem, advanced set-top box, or other dedicated device. [Comcast's vice-president-strategic planning] speculates that the service would not be marketed as 'IP telephony,' but simply as a cheaper alternative to regular telephone service." *Id.*

¹¹ See Petition of the Association for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions necessary To Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-78, at 4 (filed May 27, 1998) ("ALTS Petition").

¹² *Id.* at 9.

and high-speed Internet access on a single fully integrated local metropolitan area ATM transport network.¹³ According to WinStar's President and Chief Operating Officer, as a result of the new equipment, "[f]or the first time, the resources and features of the much-heralded information superhighway will be affordable to nearly everyone, at speeds in excess of 200 megabits per second."¹⁴ Similarly, Hughes DirecPC/DirecTV offers high-speed Internet access, called Turbo Internet Software, at speeds ranging from 200 to 400 kbps.¹⁵

Plainly, advanced services are provided in a market that bears little resemblance to conventional local exchange telephone service.¹⁶ ILECs hold no advantage over other providers of advanced services; rather, they are new entrants in a market where the "incumbent" providers come from other industry segments. While some still argue that, in the conventional telephone market, the "local loop" remains a bottleneck for some (primarily residential) customers in some (primarily suburban and rural) areas. In the advanced services market, in contrast, the loop cannot realistically be viewed as a

¹³ See "WinStar and Hughes Network Systems Enter Strategic Relationship for Nationwide Deployment of Point-to-Multipoint Broadband Fixed Wireless Networks," <<http://www.winstar.com/indexNews.htm>>.

¹⁴ *Id.* Similarly, Lucent Technologies is developing technology that would boost the capacity of fixed wireless networks by ten to twenty times. Scientists at Lucent's Bell Labs research arm said the technology will be a "substitute for traditional copper wires." "Bell Labs Discovers a Way To Boost Wireless Networks," *New York Times*, Sept. 10, 1998, at B6.

¹⁵ See <<http://www.future-furnishings.com>>; <<http://www.direcpc.com/about/a36f.html>>.

¹⁶ Moreover, §§ 251(c) and 271 specifically focus on opening conventional local exchange service markets to competition. Advanced services are in a very different situation under the text of the Telecommunications Act of 1996.

bottleneck at all. While the loop certainly can be used to provide advanced services (assuming it meets certain technical requirements), the other, better established providers noted above can offer high-speed Internet access and similar capabilities without using any portion of an ILEC's network. Similarly, while competing providers of local telephone service must interconnect with the ILEC in order to provide ubiquitous terminating calling, interconnection is not a requirement in the advanced services market because calls are directed to a single gateway (usually an Internet Service Provider, or ISP). Once again, therefore, the ILEC cannot be considered to be a bottleneck.

B. Notwithstanding The Competitive Nature Of The Advanced Services Market, ILECs Remain Subject To Burdensome And Asymmetrical Regulation.

Even though they lack control of essential inputs for the provision of advanced services, ILECs are burdened with unique and highly intrusive regulations that apply to none of their competitors. For example, ILECs alone must publish and seek Commission approval for their prices, give their competitors deeply discounted access to unbundled network elements used to provide advanced services, and offer advanced services to their competitors at rates well below retail. In contrast, the ILECs' rivals – including AT&T/TCG/TCI/British Telecom, MCI/WorldCom/MFS/Brooks/UUNet, Sprint/Deutsche Telekom/France Telecom, and the large cable MSOs – can compete unhampered by such pervasive and burdensome obligations.

Notably, the *Advanced Services MO&O* exacerbates the ILECs' unfavorable regulatory status and thereby minimizes their incentive to invest in advanced

technology and services. After the *MO&O*, ILECs must assume all capital risk of deploying equipment used to provide enhanced services by giving their competitors access to that equipment at hypothetical forward-looking cost – even though it is readily available in the marketplace to all purchasers on non-discriminatory terms.¹⁷ ILECs must treat all advanced services as “telecommunications services” subject to tariffing, resale, and other obligations – even though the equivalent services are considered non-telecommunications when offered by many of their rivals, and even though the Commission has absolutely no factual basis on which to classify services that have not even been developed, let alone brought to market.¹⁸ And, ILECs must provide advanced services to their competitors on a discounted, wholesale basis – even though they have no market power in providing such services.¹⁹ GTE respectfully submits that each of these determinations is contrary to law and sound public policy, and antithetical to Congress’s goals in enacting § 706.

¹⁷ *Advanced Services MO&O*, ¶ 57.

¹⁸ *Id.*

¹⁹ *Id.*, ¶ 61 (holding that discounted resale of advanced services that are “exchange services” is required and suggesting that advanced services that are “exchange access” are “fundamentally different from the exchange access services that the Commission referenced in the *Local Competition Order* and concluded were not subject to section 251(c)(4).”).

C. Although Well-Intended, The Proposed Separation, Unbundling, And Collocation Requirements Would Aggravate Existing Regulatory Disparities And Undermine Investment.

The *NPRM* seeks to establish "an optional alternative pathway . . . for incumbent LECs that are willing to offer advanced services on the same footing as any of their competitors."²⁰ Specifically, if advanced services are offered through "an affiliate that is truly separate" from the ILEC, the affiliate will not be subject to the obligations of § 251(c), will be presumed non-dominant, and will not have to file tariffs for jurisdictionally interstate services. If an ILEC chooses to offer advanced services directly rather than through such an affiliate, it will remain subject to § 251(c) and treated as a dominant carrier with respect to those services.²¹

Although GTE commends the Commission for seeking to permit companies within an ILEC's corporate family to compete on an equal basis with other service providers, it believes that the separate affiliate proposal is flawed in several fundamental respects.²² Most notably, the hyper-separation requirement would deprive the affiliate of any opportunity to capitalize on economies of scale and scope that are

²⁰ *NPRM*, ¶ 86.

²¹ *Id.*

²² In any event, the alternative pathway is no longer possible for GTE, the BOCs, and a number of independent telephone companies, all of which will have begun providing ADSL service through their ILECs prior to release of the order in this proceeding and, in accordance with the *Advanced Services MO&O*, are now subject to the expansive Section 251(c) obligations adopted therein. The separate affiliate rules will essentially be meaningless unless the Commission permits the ILECs freely to transfer advanced services equipment and personnel to an affiliate without regulatory penalty and without converting the affiliate into an ILEC. See Section II.D, *infra*.

available to all of its competitors. Affiliates of ILECs also might be forbidden to obtain advanced services equipment from the ILEC, to purchase unbundled elements and services from the ILEC, and even to obtain funding from the ILEC's corporate parent and use the same brand name.²³

In short, rather than leaving it to the marketplace to determine which companies succeed and which fail, the proposed rules essentially would guarantee that no ILEC, and no affiliate of an ILEC, could best a cable company, CLEC, or IXC offering equivalent services – even if that ILEC or affiliate would be more innovative and efficient in the absence of disparate regulation. Rather than allowing consumers to choose the best technology for a particular service, the proposed rules would handicap telephone network-based alternatives in favor of cable modems, broadband wireless, satellites, utility-owned fiber, and other competitive options – even though the telephone network may in some cases be the most cost-effective delivery platform. And, rather than promoting investment and innovation, the proposed rules would reduce any incentive an ILEC might have to deploy advanced services – even though the ILECs and their affiliates may be best-positioned to bring new technology to rural areas, low-income inner city residents, schools, and libraries.

²³ As detailed in Section II *infra*, these proposals are unrelated to the classification of the affiliate as an "ILEC," inconsistent with the Commission's *Non-Accounting Safeguards* and *Regulatory Treatment* orders, unnecessary to ensure equitable treatment of unaffiliated competitors, and irreconcilable with the goals of § 706. See *generally Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, 11 FCC Rcd 21905 (1996) ("*Non-Accounting Safeguards Order*"); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 12 FCC Rcd 15756 (1997) ("*Regulatory Treatment Order*").

The other proposals in the *NPRM* would further stray from the principle of minimizing regulation and placing primary reliance on market forces to promote investment. For example, the *NPRM* seeks comment on additional obligations regarding the types of equipment that competitors must be permitted to collocate on ILECs' premises, the allocation of collocation space among competitors, rights to verify exhaustion of space, and the size and type of collocation space. Many of these proposals, however, raise serious legal, security, and technical concerns, and none is necessary to foster the competitive delivery of advanced services. GTE offers instead specific recommendations for modifying the existing collocation rules in order to address legitimate requests by competitors without unduly burdening the ILEC or threatening network integrity.²⁴

Likewise, the Commission proposes new rules to govern spectrum management, unbundle the loop into physical pieces and separate spectrum paths, and mandate access to loops passing through remote terminals.²⁵ These rules ignore profound technical constraints and, once again, are simply unnecessary to assure fair competition. Finally, proposals to expand ILEC unbundling obligations and force discounted resale of advanced services are without legal or policy basis and would further distort investment incentives for both ILECs and their competitors.²⁶

²⁴ See generally Section III, *infra*.

²⁵ See Section IV, *infra*.

²⁶ See Sections V and VI, *infra*, respectively.

To spur investment and promote true competition, the Commission must relax regulation, not ratchet existing restrictions even tighter. GTE's specific suggestions for an alternative regulatory framework for advanced services are discussed immediately below and further detailed in the remainder of these comments.

D. GTE Offers An Alternative, Market-Based Approach That Effectively Achieves The Commission's Goals And Minimizes Intervention In An Efficiently Functioning, Competitive Marketplace.

GTE proposes below its National Advanced Service Plan (NASP), a market-based approach to implementing § 706 specifically designed to encourage investment by all providers and to promote competition based on price and performance rather than regulatory protectionism. Recognizing that some regulatory oversight may be deemed necessary, this market-based approach addresses the Commission's concerns regarding cross-subsidization and discriminatory treatment of competitors. Like the *NPRM*, the NASP includes rules governing a non-ILEC, non-dominant "advanced services affiliate" and modifications to the existing ILEC collocation and unbundling obligations. GTE respectfully submits that its proposed framework will effectively mitigate the Commission's concerns while avoiding the disincentives to innovation and investment engendered by the proposals in the *NPRM*.

1. Affiliates that comply with section 64.1903 of the rules should be deemed non-incumbent and non-dominant.

GTE agrees with the Commission that the parent companies of ILECs should be given a realistic opportunity to establish an affiliate that could provide advanced services on a non-dominant basis, without being subject to unbundling and discounted